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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/750,432

12/28/2000

Lynh Nguyen

ST9-99-134US2

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07/19/2006

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WASHINGTON, DC 20037

EXAMINER

CHANKONG, DOHM

ART UNIT

PAPER NUMBER

2152

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/750,432

Applicant(s)

NGUYEN, LYNH

Examiner

Dohm Chankong

Art Unit

2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### DETAILED ACTION

- 1> This action is in response to Applicant's remarks, filed 4.27.2006. Claims 1-3, 5-14, 16-25 and 28-36 are presented for further examination.
- 2> This is a final rejection.

### *Response to Arguments*

#### I. Response to Applicant's Remarks

Applicant argues in substance: (A) Brendel does not disclose a direct connection between an interface module and the port module; and (B) Brendel and Polizzi cannot be combined. Applicant's arguments have been fully considered but they are not persuasive for the following reasons.

#### A. Polizzi and Brendel disclose a direct connection between an interface module and a port module

The claim language states "connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications". The purpose of the connection manager is to "facilitate between the interface module and port module". Thus, the connection manager is utilized once to facilitate a connection between the interface module and port module. Subsequent communications between the modules bypass the connection manager.

Brendel is relied upon to teach this feature which was not expressly disclosed in Polizzi's system. Applicant dismisses Brendel as merely disclosing returning data to a browser without using the load-balancer. However, Brendel discloses a system with the functionality as claimed by Applicant. Brendel discloses a system whereby a load manager facilitates between a client and a server [Figure 6]. Brendel also discloses that subsequent communications between the server and client are direct communications, bypassing the load balancer [abstract | Figure 6 | column 9 «lines 18-21» : files are returned directly to the client implies that there is a direct connection between the server and client].

Polizzi discloses the system substantially as claimed by Applicant. Brendel compensated for the missing feature. Polizzi's service broker has the same functionality as Brendel's load balancer [see Polizzi, 0024, 0034]. Polizzi's service broker facilitates between an interface module and a port module [Figure 1 «items 105, 130»], which correspond to Brendel's client and server devices. Thus, the combination of Polizzi and Brendel disclose the feature of providing a direct connection between an interface module and a port module in subsequent communications.

B. The combination of Polizzi and Brendel is reasonable and would not render Polizzi inoperable

Applicant also argues that Polizzi cannot be modified in view of Brendel's teachings. Applicant cites sections in Polizzi that discuss the service broker as supporting this assertion. Applicant argues that Polizzi's service broker "must always

be interposed between the network interface and the agents” and that “the service broker can never be bypassed”. Polizzi never explicitly teaches these features.

Applicant also argues that modifying Polizzi would result in eliminating the gateway function thereby rendering the system inoperable. The Office disagrees for the following reasons.

Polizzi’s invention is very similar to Brendel’s prior art system [see Brendel, Figure 4]. Brendel discloses a load balancer that is always interposed, in terms of communications, between a client and server. This system is similar to Polizzi’s system where the service broker is interposed between the interface module and the port module. Brendel, unsatisfied with this structure, introduces the novelty whereby the load balancer may be bypassed utilizing a direct connection established between the server and client after the balancer has selected the appropriate server to service the job request.

Contrary to Applicant’s assertion, Brendel’s teachings would not do away with Polizzi’s service broker but rather, it would improve upon Polizzi’s system. Brendel does not eliminate the service broker because Brendel’s load balancer is essentially analogous to Polizzi’s service broker. Applicant is correct in stating that Polizzi’s service broker is responsible for the disposition of jobs to the agents. Brendel’s load balancer is also responsible for the same function of selecting the appropriate server to service client requests (jobs) [column 9 «lines 30-32»]. The purpose of Brendel’s bypass feature is to avoid overloading at the load balancer [column 9 «lines 60-64»].

In other words, Brendel's teachings do not change or modify Polizzi's principle of operation but provides a clear improvement. The service broker is still in control of the port modules, but Brendel would enable the port modules and interface module to directly communicate. Polizzi does not contemplate the workload placed at the service broker. Brendel's system would improve upon this aspect of Polizzi's system and service broker by bypassing the broker only after the broker has selected the appropriate port module based on load.

The broker is thus still integral. Brendel simply enables Polizzi's port modules to directly transmit requested information to the interface module and bypass the service broker during subsequent communications as claimed. Such a modification would prevent Polizzi's service broker from overloading.

## II. Conclusion

In view of the foregoing remarks, Applicant's remarks are not found persuasive. The claim rejections set forth in the previous action are maintained.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3> Claims 1-4, 8, 10-15, 19, 21-27, 31 and 33-36 are rejected under 35 U.S.C. 103(a) as being anticipated by Polizzi et al U.S. Patent Publication No. 2002|0023158 ["Polizzi"], in view of Brendel et al, U.S Patent No. 5,774,660 ["Brendel"].

4> Claims 5-7, 9, 16-18, 20, 28-30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polizzi and Brendel.

#### *Conclusion*

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dohm Chankong whose telephone number is 571.272.3942. The examiner can normally be reached on Monday-Thursday [7:30 AM to 4:30 PM].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571.272.3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DC



BUNJOB JAROENCHONWANIT  
SUPERVISORY PATENT EXAMINER



communications.” The Examiner attempts to cure this deficiency by relying on a portion of Brendel (Fig. 6; column 9, lines 18-21) which allegedly discloses a load balancer for facilitating the interface between a user and a remote application. The portion of Brendel cited by the Examiner merely states: “FIG. 6 is a diagram of a web server which asymmetrically routes incoming traffic through a load-balancer while bypassing the load-balancer for data transmitted back to client browsers.” However Brendel, either alone or in combination with Polizzi, does not disclose a direct connection between an interface module and the port module as required by claim 1 (emphasis added) which the Examiner admits is absent in Polizzi. Rather, Brendel merely discloses that data can be returned to a browser without using the load-balancer. Accordingly, even if the teachings of the references were combined as asserted in the Office Action, the combination would not satisfy all the limitations of the claim.

Furthermore, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. 2143.01 *citing In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Here, no portion of Polizzi or Brendel teaches or suggests combining the teachings of the prior art references. Applicant respectfully submits that modifying Polizzi’s service broker with Brendel’s alleged teachings of direct communication between Polizzi’s network interface and agents would not be possible for the following reasons.

First, Polizzi discloses that the service broker 125 “acts as a gateway to the other service agents within the portal systems.” Polizzi at paragraph 0033. Hence, Polizzi appears to teach that the service broker must always be interposed between the network interface and the agents which suggests that communication cannot take place between the web browser and the database

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unless the service broker is always present during a communication. Thus, modifying Polizzi based on Brendel, as asserted in the Office Action, to bypass the service manager 125 would result in eliminating the gateway function thereby rendering the system inoperable<sup>1</sup>.

Second, Polizzi discloses that the service broker can never be bypassed because it controls the disposition of jobs to the agents within the portal system (see paragraph 0025, lines 1-5). If the agents were not controlled by the service broker, the agents would become overloaded and malfunction (see paragraph 0024, lines 4-7). Therefore, the modification to Polizzi's service broker by incorporating the alleged direct communication function of Brendel's load balancer would render Polizzi's system inoperable. See MPEP §§ 2143.01, 2145 (III) and (x)(D)(The modifications "cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose.")

Accordingly, Applicant respectfully submits that claim 1 is patentable over the cited references, and respectfully requests the Examiner to reconsider and withdraw the rejection.

Independent claims 14 and 25 also recite "connecting directly the interface module and the port module." As such, Applicant respectfully submits that claims 14 and 15 are patentable over the cited references for at least the same reasons mentioned for claim 1, and respectfully requests the Examiner to reconsider and withdraw the rejection.

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<sup>1</sup> Figures 1 and 2 of Polizzi show that the service broker is the only disclosed path for the network interface and the agents to communicate with each other.

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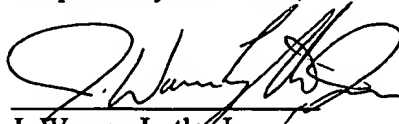
Dependent Claims 2-3,5-13,16-24 and 28-36

Claims 2-3,5-13,16-24 and 28-36 are dependent on independent claims 1, 14, and 25, respectively. Applicant submits that such claims are patentable at least by virtue of their dependency.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

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